

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34812

STATE OF IDAHO,)	2008 Unpublished Opinion No. 592
)	
Plaintiff-Respondent,)	Filed: August 7, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
OSWALDO ZARAGOZA aka OSWALDO)	THIS IS AN UNPUBLISHED
ZARAGOZA-PADILLA, RAFAEL)	OPINION AND SHALL NOT
ZARAGOZA, RAFAEL ZARAGOZA-)	BE CITED AS AUTHORITY
PADILLA, OSWALDO ZARAGOZA,)	
OSWALDO PADILLA,)	
)	
Defendant-Appellant.)	
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Judgment of conviction and unified sentence of sixteen years, with a minimum period of confinement of six years, for lewd conduct with a minor under sixteen, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief, Appellate Unit, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Oswaldo Zaragoza appeals from his judgment of conviction and unified sentence of sixteen years, with a minimum period of confinement of six years, for lewd conduct with a minor under sixteen, Idaho Code § 18-1508. He also appeals the denial of his Idaho Criminal Rule 35 motion for reduction of the sentence. We affirm.

Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court's discretion. *State v. Hedger*, 115 Idaho 598, 768 P.2d 1331 (1989). We will not conclude on review that the sentencing court abused its discretion unless the sentence is unreasonable under the facts of the case. *State v. Brown*, 121 Idaho 385, 825 P.2d

482 (1992). In evaluating the reasonableness of a sentence, we consider the nature of the offense and the character of the offender, applying our well-established standards of review. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

A motion for reduction of a sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho 447, 680 P.2d 869.

Having reviewed the record, we conclude that the district court did not abuse its discretion in imposing Zaragoza's sentence nor in denying Zaragoza's Rule 35 motion for reduction of sentence. The judgment of conviction and sentence, and the order denying Zaragoza's Rule 35 motion, are affirmed.